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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,593	03/10/2005	Kaoru Inoue	232444	2622
23460	7590	09/27/2005	EXAMINER	
LEYDIG VOIT & MAYER, LTD			BISSETT, MELANIE D	
TWO PRUDENTIAL PLAZA, SUITE 4900				
180 NORTH STETSON AVENUE				
CHICAGO, IL 60601-6780				

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/519,593	INOUE ET AL.	
	Examiner	Art Unit	
	Melanie D. Bissett	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. in view of Hu et al.

3. Koyama discloses plastic containers comprising a barrier layer containing an oxygen scavenger and two outer layers of thermoplastic resin (abstract; col. 2 lines 55-68). The gas barrier resin is preferably ethylene-vinyl alcohol (EVOH) and contains 1-1000%, preferably 5-200% by weight of the oxygen scavenger (col. 7 lines 17-46). The outer layers preferably contain polyolefins (col. 8 line 63-col. 9 line 12). However, the reference does not disclose the applicant's claimed anthraquinone component. Hu teaches that oxygen scavenging dyes, preferably sodium anthraquinone  $\beta$ -sulfonate, are dark red in reduced state but turn colorless in an oxidized state, thus providing a dye for indicating the amount of oxygen transported through a packaging material (abstract). This component is noted by the applicant as having the claimed percent weight loss, placement of substitution, and solubility. Thus, it would have been *prima facie* obvious to use the anthraquinone to provide indicative dyes for the Koyama packaging.

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4. Claims 5-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. in view of Hu et al. as applied to claims 1-4 and 7-8 above, and further in view of Nippon Synthetic.

5. The references apply as above, failing to teach the inclusion of an acid component and failing to specify the water content of the EVOH. Koyama does teach the method of melt mixing the components and extruding them (col. 9 lines 55-68). Nippon Synthetic teaches extruded EVOH materials comprising an EVOH polymer and small amounts of acid components, where the water content reaches up to 50% (abstract). The materials have improved transparency, gas barrier properties, and film appearance in a continuous process. Thus, it would have been *prima facie* obvious to include any amount of acid and to choose any water content sufficient to optimize transparency, gas barrier properties, and appearance in the continuous process of Koyama and Hu.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (571) 272-1068. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melanie D. Bissett  
Patent Examiner  
Art Unit 1711

mdb